



UNITED STATES DEPARTMENT OF COMMERCE
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IM52/0309

EXAMINER	
HENDRICKS, K	
ART UNIT	PAPER NUMBER
1761	13

DATE MAILED:

03/09/01

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- a) ☒ is extended to run _____ or continues to run 3 months from the date of the final rejection
- b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 2-23-01 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☐ The proposed amendments to the claim and /or specification will not be entered and the final rejection stands because:
- a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
 - b. ☐ They raise new issues that would require further consideration and/or search. (See Note).
 - c. ☐ They raise the issue of new matter. (See Note).
 - d. ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing an appeal, the proposed amendment ☒ will be entered ☐ will not be entered and the status of the claims will be as follows:

Claims allowed: none
Claims objected to: 21-23
Claims rejected: 1-20 & 24

However;

☐ Applicant's response has overcome the following rejection(s): _____

4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because See attachment.

5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

KEITH HENDRICKS
PRIMARY EXAMINER

Art Unit: 1761

Attachment to Advisory Action

The request for reconsideration does not overcome the rejections for the reasons of record, which clearly and specifically point out how each and every element of the rejected claims have been met. Applicants have completely ignored, and thus have not addressed, specific statements in the Final Office action regarding these points. For example, (1) At the top of page 4, regarding fiber content, and (2) referred to at the bottom of page 4, quoting Simone et al. At col. 5, lines 65-68, Simone et al. state that after extruding, "the chew particles are then allowed to cool and dry at a controlled temperature... to adjust the moisture level to about 10 to about 30% by weight" (underlining added). Applicants' arguments are incorrect, and misconstrue the reference, regarding the "final product" versus the extrudate at some point recently after extrusion.

Regarding the issue of "at least 2%", this is improper, and the rejection is maintained for the reasons of record. Applicants state that since they also disclose "insoluble fiber" as a general component without percent limitations, this naturally encompasses "at least 2%", and that "the claims as filed supported the use of any amount of insoluble fiber" (page 2 of response). This is improper. Initially, there is no support to select or define "2%" from "about 2%", in applicants' previous claims (certain of applicants' claims recite "about 2% to about 15%"). Secondly, there is no support for any and all percentages above the recited (about) 15%. For example, in instant claim 1, other than the improperly-added insoluble fiber component percentage (and a moisture level percentage, which is not a specific individual component, *per se*, but may be inherently provided by any component(s) including the insoluble fiber), there are no other percentages provided for the remaining components. Thus, according to applicants' arguments to "any amount of insoluble fiber" (presumably of "at least 2%"), the claimed pet food composition would encompass 80%, 90% or even 100% insoluble fiber. If this is the interpretation applicants contend, then the claims would still be improper, as it would be unclear as to how the remaining recited components could be present, if the composition was comprised of 100% insoluble fiber. If applicants wish to argue that the other components must be present as claimed, and therefore 100% insoluble fiber would obviously not be encompassed by the claim(s), then it would be unclear as to what percentages would be necessary for each and every component, including the insoluble fiber, from the broadly-recited claim(s). This would also conflict with several dependent claims, as well. Therefore, applicants' specification does not support the improperly-added phrase of "at least 2%".

**KEITH HENDRICKS
PRIMARY EXAMINER**